

ORIGINAL  
OPEN MEETING



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MEMORANDUM

Arizona Corporation Commission

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TO: THE COMMISSION

FROM: Utilities Division

DATE: April 12, 2011



RE: IN THE MATTER OF THE APPLICATION OF AZTECH COMMUNICATIONS, LLC AND CITIZENS UTILITIES RURAL COMPANY, INC. DBA FRONTIER CITIZENS UTILITIES RURAL FOR APPROVAL OF LEASE PURSUANT TO ARS §40-285 (DOCKET NOS. T-20421A-11-0102, T-01954B-11-0102)

Introduction

On March 2, 2011, Aztech Communications, LLC ("Aztech") and Citizens Utilities Rural Company, Inc. dba Frontier Citizens Utilities Rural ("Frontier") filed a joint application to request approval pursuant to A.R.S. § 40-285, to authorize Aztech to lease certain fiber optic telecommunications assets to Frontier in connection with a Lease Agreement dated February 28, 2011 between the Parties.

The Transaction

Aztech is authorized to provide telecommunications services pursuant to a Certificate of Convenience of Necessity ("CC&N") granted by the Commission in Decision No. 67750, dated April 11, 2005. Aztech serves customers in the El Rio development (including the El Rio Golf & Country Club, a business park, residences, and a golf course) located in Mohave Valley, Arizona (the "Service Area").

On January 24, 2011, Aztech filed an application with the Commission requesting authority to discontinue services and to cancel its CC&N. Frontier is the Incumbent Local Exchange Carrier ("ILEC") authorized to provide service in Mohave County, including Aztech's Service Area.

In order to allow Frontier to commence service to those customers in the Service Area, Aztech and Frontier entered into the Lease Agreement. Pursuant to the terms of the Lease Agreement, Aztech will lease to Frontier certain fiber optic telecommunications facilities used by Aztech to provide service. The Lease Agreement has a term of one year. At any time during the lease term, Frontier shall have the option to purchase the assets and/or install its own

facilities in the right of way in the Service Area. The lease commenced on March 1, 2011 and as a result of the pending discontinuance of service by Aztech, Frontier has commenced service to customers in the Service Area through the use of the facilities that are the subject of the Lease Agreement.

#### Staff's Analysis

Staff has been in communication with the Parties in this application since January 2011 when notification of proposed business plan changes by Aztech was received. Subsequent discussions with Aztech and Frontier clarified that the potential transition of local exchange customers from Aztech to Frontier would require an associated transfer of assets, by lease or sale, from Aztech to Frontier. Without such transfer of assets, approximately forty customers currently served by Aztech would not be within reach of Frontier's existing facilities and would, therefore, be without local exchange service for a period of 30 – 60 days. The Lease Agreement ensures the continuation of local exchange service for existing customers and new customers entering the impacted Service Area.

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to lease or sell utility assets as proposed in this application. The statute serves to protect captive customers from a utility's act to dispose of any of its assets that are necessary for the provision of service; thus, it serves to preempt any service impairment due to disposal of assets essential for providing service. Staff concludes that the Lease Agreement between the Parties in this matter will ensure the continuation of local exchange service to customers impacted by the Aztech application to cancel its CC&N in Docket No. T-20421A-11-0023.

In matters subject to A.R.S. § 40-285, Staff generally requests that the Applicants publish a notice of the Application in a newspaper of general circulation in the area the company serves. Since potentially affected customers have already received two notices from Aztech in connection with its application to cancel its CC&N, Docket No. T-20421A-11-0023, Staff does not believe an additional notice should be required in this matter.

#### Staff's Recommendations

Based on its analysis of the proposed transaction, Staff concludes that the transaction would not impair the financial status of the Frontier, would not impair its ability to attract capital, nor would it impair the ability of the Frontier to provide safe, reasonable, and adequate service. Therefore, Staff recommends approval of the application to authorize Aztech to lease certain fiber optic telecommunications assets to Frontier in connection with a Lease Agreement dated February 28, 2011 between the Parties. Staff further recommends Frontier be required to notify

THE COMMISSION

April 12, 2011

Page 3

the Commission sixty days in advance of any decision to purchase the Aztech assets or install its own facilities in the right of way in the Service Area. In addition, Staff recommends that the Commission make approval in this matter retroactive to the effective date of the Lease Agreement, February 28, 2011.

A handwritten signature in black ink, appearing to read 'Steven M. Olea', with a long horizontal stroke extending to the right.

Steven M. Olea  
Director  
Utilities Division

SMO:AFF:lhmm\MAS

ORIGINATOR: Armando F. Fimbres

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 GARY PIERCE  
Chairman

3 BOB STUMP  
Commissioner

4 SANDRA D. KENNEDY  
Commissioner

5 PAUL NEWMAN  
Commissioner

6 BRENDA BURNS  
Commissioner

7  
8 IN THE MATTER OF THE APPLICATION )  
OF AZTECH COMMUNICATIONS, LLC )  
9 AND CITIZENS UTILITIES RURAL )  
COMPANY, INC. DBA FRONTIER )  
10 CITIZENS UTILITIES RURAL FOR )  
APPROVAL OF LEASE PURSUANT TO )  
11 ARS §40-285 )  
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DOCKET NOS. T-20421A-11-0102  
T-01954B-11-0102

DECISION NO. \_\_\_\_\_

ORDER

14 Open Meeting  
April 27 and 28, 2011  
15 Phoenix, Arizona

16 BY THE COMMISSION:

17 FINDINGS OF FACT

18 1. On March 2, 2011, Aztech Communications, LLC ("Aztech") and Citizens Utilities  
19 Rural Company, Inc. dba Frontier Citizens Utilities Rural ("Frontier") filed a joint application to  
20 request approval pursuant to A.R.S. § 40-285, to authorize Aztech to lease certain fiber optic  
21 telecommunications assets to Frontier in connection with a Lease Agreement dated February 28,  
22 2011 between the Parties.

23 2. Aztech is authorized to provide telecommunications services pursuant to a  
24 Certificate of Convenience of Necessity ("CC&N") granted by the Commission in Decision No.  
25 67750, dated April 11, 2005.

26 3. Aztech serves customers in the El Rio development (including the El Rio Golf &  
27 Country Club, a business park, residences, and a golf course) located in Mohave Valley, Arizona  
28 (the "Service Area").

1           4.       On January 24, 2011, Aztech filed an application with the Commission requesting  
2 authority to discontinue services and to cancel its CC&N.

3           5.       Frontier is the Incumbent Local Exchange Carrier ("ILEC") authorized to provide  
4 service in Mohave County, including Aztech's Service Area.

5           6.       In order to allow Frontier to commence service to those customers in the Service  
6 Area, Aztech and Frontier entered into the Lease Agreement.

7           7.       Pursuant to the terms of the Lease Agreement, Aztech will lease to Frontier certain  
8 fiber optic telecommunications facilities used by Aztech to provide service.

9           8.       The Lease Agreement has a term of one year. At any time during the lease term,  
10 Frontier shall have the option to purchase the assets and/or install its own facilities in the right of  
11 way in the Service Area. The lease commenced on March 1, 2011, and as a result of the pending  
12 discontinuance of service by Aztech, Frontier has commenced service to customers in the Service  
13 Area through the use of the facilities that are the subject of the Lease Agreement..

14          9.       Staff has been in communication with the Parties in this application since January  
15 2011 when notification of proposed business plan changes by Aztech was received. Subsequent  
16 discussions with Aztech and Frontier clarified that the potential transition of local exchange  
17 customers from Aztech to Frontier would require an associated transfer of assets, by lease or sale,  
18 from Aztech to Frontier.

19          10.      Without such transfer of assets, approximately forty customers currently served by  
20 Aztech would not be within reach of Frontier's existing facilities and would, therefore, be without  
21 local exchange service for a period of 30 – 60 days. The Lease Agreement ensures the  
22 continuation of local exchange service for existing customers and new customers entering the  
23 impacted Service Area.

24          11.      A.R.S. § 40-285 requires public service corporations to obtain Commission  
25 authorization to lease or sell utility assets as proposed in this application. The statute serves to  
26 protect captive customers from a utility's act to dispose of any of its assets that are necessary for  
27 the provision of service; thus, it serves to preempt any service impairment due to disposal of assets  
28 essential for providing service.

12. Staff concludes that the Lease Agreement between the Parties in this matter will ensure the continuation of local exchange service to customers impacted by the Aztech application to cancel its CC&N in Docket No. T-20421A-11-0023.

13. In matters subject to A.R.S. § 40-285, Staff generally requests that the Applicants publish a notice in a newspaper of general circulation in the area in which the company serves. Since potentially affected customers have already received two notices from Aztech in connection with its application to cancel its CC&N, Docket No. T-20421A-11-0023, Staff does not believe an additional notice should be required in this matter.

14. Based on its analysis of the proposed transaction, Staff concludes that the transaction would not impair the financial status of the Frontier, would not impair its ability to attract capital, nor would it impair the ability of the Frontier to provide safe, reasonable, and adequate service. Therefore, Staff recommends approval of the application to authorize Aztech to lease certain fiber optic telecommunications assets to Frontier in connection with a Lease Agreement dated February 28, 2011 between the Parties. Staff further recommends Frontier be required to notify the Commission sixty days in advance of any decision to purchase the Aztech assets or install its own facilities in the right of way in the Service Area.

15. In addition, Staff recommends that the Commission make approval in this matter retroactive to the effective date of the Lease Agreement, February 28, 2011.

#### CONCLUSIONS OF LAW

1. Aztech Communications, LLC and Citizens Utilities Rural Company, Inc. dba Frontier Citizens Utilities Rural are public service corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. § 40-285.

2. The Commission has jurisdiction over Aztech Communications, LLC and Citizens Utilities Rural Company, Inc. dba Frontier Citizens Utilities Rural and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated April 12, 2011, concludes that it is in the public interest to grant approval as proposed and discussed herein.

ORDER

IT IS FURTHER ORDERED that Aztech Communications, LLC and Citizens Utilities Rural Company, Inc. dba Frontier Citizens Utilities Rural be authorized to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted as discussed herein.

IT IS FURTHER ORDERED that the application of Aztech Communications, LLC and Citizens Utilities Rural Company, Inc. dba Frontier Citizens Utilities Rural is subject to the condition that Frontier notify the Commission sixty days in advance of any decision to purchase the Aztech assets or install its own facilities in the right of way in the Service Area that is the subject of this matter.

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IT IS FURTHER ORDERED that approval of this matter be retroactive to the effective date of the Lease Agreement, February 28, 2011.

IT IS FURTHER ORDERED that this Decision shall be become effective immediately.

**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
Executive Director of the Arizona Corporation Commission,  
have hereunto, set my hand and caused the official seal of  
this Commission to be affixed at the Capitol, in the City of  
Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

SMO:AFF:lh\MAS

Decision No. \_\_\_\_\_



1 SERVICE LIST FOR: Aztech Communications, LLC and  
Citizens Utilities Rural Company, Inc. dba Frontier Citizens Utilities Rural  
2 DOCKET NOS. T-20421A-11-0102 and T-01954B-11-0102

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7 Mr. Steven M. Olea  
Director, Utilities Division  
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